

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEDE SHKURTI,
BARDHE SHKURTI,

Petitioners,

vs

Case No: 07-13759
Honorable Victoria A. Roberts

ALBERTO GONZALES,

Respondent.

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ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

This matter is before the Court on Petitioner Dede Shkurti's Petition for Writ of Habeas Corpus. Bardhe Shkurti is also listed in the case caption as a Petitioner. However, there is no reference to Bardhe Shkurti in the pleadings. It is presumed that Bardhe Shkurti was added in error.

For the reasons stated below, Petitioner's Petition is **DENIED**.

II. BACKGROUND AND ARGUMENTS

Petitioner Dede Shkurti is a citizen of Albania. Petitioner does not indicate the grounds upon which he was subjected to removal proceedings. However, he advises that he became subject to a final order of removal on July 26, 2007 when the Board of Immigration Appeals ("BIA") dismissed his appeal. One week later, on August 9, 2007, Petitioner was detained either by United States Citizenship and Immigration Services ("CIS") or Immigration and Customs Enforcement ("ICE") pending removal to Albania.

Petitioner acknowledges that his detention is "legal." But, on August 14, 2007

Petitioner filed in the Sixth Circuit a Petition for Review of the BIA decision and an emergency motion for stay of removal, and he fears that he will be removed before the Sixth Circuit rules on either motion. On August 22, 2007, the Government filed pleadings in opposition, and on September 7, 2007 the Government filed a Notice of Intent to Remove the Petitioner within two weeks.

Petitioner asserts that removal before his motions are decided would deprive him of his Fifth Amendment due process rights. Petitioner also contends that he is not a flight risk, and that he has suffered injuries while in custody which cannot be treated at the facility where Petitioner is being held. Therefore, Petitioner asks this Court enjoin ICE from deporting him before the Sixth Circuit rules on his petitions.

The Government argues that habeas relief must be denied because Petitioner is appropriately detained under 8 U.S.C. §1231(a)(2), which requires that an alien be detained during the 90-day removal period after an order of removal becomes final. Alternatively, the Government asserts that the Court should refrain from interceding since a motion for stay is already pending before the Sixth Circuit and there is potential for inconsistent rulings.

III. ANALYSIS

The Government is correct. Under 8 U.S.C. §§1231(a)(1)(A) and (a)(2), the Government must attempt to remove an alien within 90 days after an order of removal becomes final and it must detain the alien in custody during that time. Because the 90-day period has not elapsed, Petitioner's detention is permissible and habeas relief is not warranted. The Court also declines to enter an Order to stay removal since a petition for the same relief is already pending (and fully briefed) before the Sixth Circuit.

IV. CONCLUSION

Petitioner's Petition for Writ of Habeas Corpus is **DENIED**.

IT IS ORDERED.

/s/ Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: September 11, 2007

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on September 11, 2007.

s/Linda Vertriest
Deputy Clerk